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09/733,304	12/08/2000	Samuel Earl Moore	Series 5551	2994

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EXAMINER

DEL SOLE, JOSEPH S

ART UNIT

PAPER NUMBER

1722

DATE MAILED: 07/08/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/733,304

Applicant(s)

MOORE, SAMUEL EARL

Examiner

Joseph S. Del Sole

Art Unit

1722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Election/Restrictions***

1. Claim 11 remains withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 and 6-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Moore, Sr. (5,320,512).

Moore, Sr. teaches a spinnerette assembly (Fig 1) having a spinnerette body (Fig 1, #12 and #14); at least one extrusion orifice (Fig 1, #26); a hollow needle being affixed in a needle mounting hole formed in the spinnerette body and wherein the needle mounting hole receives a portion of the hollow needle; a hollow needle (Fig 1, #18) extending through the extrusion orifice in a concentric manner to define an annular passage (Fig 1, #28) around the needle in the extrusion orifice; a bore forming fluid passage (Fig 1, #15) communicating with the interior of each needle; a fiber-forming material passage (Fig 1, #16) formed in the spinnerette assembly, wherein each material passage has a fiber-forming material inlet port extending from a surface of the assembly to an interior of the assembly (Fig 1, the portion in #14) and a transverse

passage extending from the material port to each annular passage (Fig 1, the portion bordering #12 and #14); the transverse portion is a backcut portion of the material passage that entirely surrounds the needle in a continuous manner and is in communication with the extrusion orifice; the material port extends substantially parallel to the extrusion orifice and the transverse passage extends substantially perpendicular to the material port (as shown by the portion of the transverse passage that follows a line between #12 and #14); the spinnerette assembly comprises a spinneret body (Fig 1, #12 and #14) and a bottom plate (Fig 1, #10); the needle is affixed in a needle mounting hole formed in the spinnerette body and receiving a portion of the needle (Fig 1); the needle mounting hole is in communication with the bore forming fluid inlet port at a surface of the spinnerette body via the bore forming fluid passage (Fig 1); the bore forming fluid passage has a first bore forming fluid conduit coaxial with the needle and in communication with the needle (Fig 1, the portion of the passage in the hold around the needle) and a second bore forming fluid conduit that extends at an angle with respect to the first bore forming fluid conduit from the bore forming fluid conduit to a surface of the spinnerette body (Fig 1); the extrusion orifice extends through portions of the spinnerette body and the bottom plate; and the material passage is formed in the spinnerette body.

4. Claims 1-3 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Coplan et al (4,315,877).

Coplan et al teach a spinnerette assembly (Fig 1) having a spinnerette body; at least one extrusion orifice (Fig 1, defined in part by #14); a hollow needle being affixed

in a needle mounting hole formed in the spinnerette body and wherein the needle mounting hole receives a portion of the hollow needle; a hollow needle (Fig 1, #18) extending through the extrusion orifice in a concentric manner to define an annular passage (Fig 1) around the needle in the extrusion orifice; a bore forming fluid passage (Fig 1, the passage communicating #28) communicating with the interior of each needle; a fiber-forming material passage (Fig 1, defined in part by #16) formed in the spinnerette assembly, wherein each material passage has a fiber-forming material inlet port extending from a surface of the assembly to an interior of the assembly (Fig 1) and a transverse passage extending from the material port to each annular passage (Fig 1, the portion of the material passage at the #22); the transverse portion is a backcut portion of the material passage that entirely surrounds the needle in a continuous manner and is in communication with the extrusion orifice; the material port extends substantially parallel to the extrusion orifice and the transverse passage extends substantially perpendicular to the material port (Fig 1); and the material passage is formed in the spinnerette body.

***Claim Rejections - 35 USC § 103***

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Moore, Sr. (5,320,512) in view of Ogata (3,526,571).

Moore, Sr. teaches the apparatus as discussed above.

Moore, Sr. fails to teach multiple transverse passages and extrusion orifices for each fiber forming material port.

Ogata teaches multiple transverse passages (Fig 1, #7) and extrusion orifices (Fig 1, #8) for a single material port (Fig 1, #2) for the purpose of creating multiple fibers while supplying the fiber material from just a single port.

It would have been obvious to one having ordinary skill in the art at the time of the Applicant's invention to have modified the invention of Moore, Sr. with a single material port for multiple transverse passages and extrusion orifices as taught by Ogata because it is a more efficient arrangement requiring less machining of the spinnerette assembly and therefore less cost.

### ***Double Patenting***

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 1-4 and 6-10 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over either claims 1-4, 6-9 and 24 or claims 12-15, 17-20 and 24 of copending Application No. 09/733,303. Although the conflicting claims are not identical, they are not patentably distinct from each other because all of the limitations of claims 1-10 are recited within the claims of 09/733,303, the claims of 09/733,303 merely contains additional limitations.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

#### ***Response to Arguments***

9. The Applicant has overcome the claim objections and the claim rejections under 35USC112.

10. Applicant's arguments filed 6/10/03 have been fully considered but they are not persuasive.

The Applicant argues that the amendments to independent claim 1 overcomes the rejections over Moore, Sr '512, Coplan et al '977 or Moore, Sr. '512 in view of Ogata '571.

The Examiner disagrees. As discussed above, Moore, Sr '512 teaches a spinnerette body (Fig 1, #12 and #14) and a hollow needle being affixed in a needle mounting hole formed in the spinnerette body, etc. The Applicant's claim as currently written does not preclude a spinnerette body comprised of two structures together. Also as discussed above, Coplan teaches the added limitations of a needle mounting hole concentrically formed with the annular passage in the spinnerette body.

The Applicant argues that the amendments to claim 1 overcome the rejection over Kinhead.

The Examiner agrees and has withdrawn the rejections drawn to Kinhead.

The Applicant argues that the provisional double patenting rejection has been overcome due to the filing of a terminal disclaimer.

The Examiner disagrees. While a terminal disclaimer would overcome the provisional double patenting rejection, no such terminal disclaimer has been filed.

### ***Conclusion***

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Correspondence***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph S. Del Sole whose telephone number is (703)



Application/Control Number: 09/733,304  
Art Unit: 1722

Page 8

308-6295. The examiner can normally be reached on Monday through Friday from 8:30 A.M. to 5:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wanda Walker, can be reached at (703) 308-0457. The official fax phone number for the organization where this application or proceeding is assigned is (703) 872-9310 for non-after finals and (703) 872-9311 for after finals.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

*Joseph S. Del Sole*  
J.S.D.  
July 7, 2003



ROBERT DAVIS  
PRIMARY EXAMINER  
GROUP ~~1000~~ 1200

7/7/03